

Message Text

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E.O. 11652: N/A
TAGS: BPRO, IN
SUBJECT: TRADE LEGISLATION AMENDMENT ON ARBITRATION
AWARDS

REF: STATE 281361

1. WE HAVE AGAIN REVIEWED ALL MATERIAL AVAILABLE IN OUR FILES
AND ECONOMIC COUNSELOR MET INFORMALLY WITH LEGAL REPRESENTATIVES
OF FCI (MEETING SHOULD UNDER NO CIRCUMSTANCES BE REVEALED TO
PERSONS OUTSIDE DEPARTMENT).

2. FACTS APPEAR TO BE AS OUTLINED BY DEPARTMENT OFFICERS TO
SENATOR TAXT. GOI, AS A MATTER OF POLICY, STRONGLY SUPPORTS
COMMERCIAL ARBITRATION AND, WHILE THIS CANNOT BE DEMONSTRATZD
IN A LEGAL SENSE, THE DECISION TO TAKE THE ARBITRATION CASE
TO THE COURTS WAS MADE BY FCI ON ITS OWN FOLLOWING LEGAL
ADVICE THAT IT HAD A REASONABLE CHANCE OF WINNING CASE. THERE
IS NO FIC (OR GOI) "POLICY" OF CHALLENGING ARBITRAL AWARDS. IN
ONE RECENT CASE, WITH A FRENCH COMPANY, THE ARBITRAL AWARD
FAVORED FCI AND THE FRENCH COMPANY TOOK THE CASE TO INDIAN COURTS.

3. THERE IS NO BASIS TO CONTEND THAT THERE HAS BEEN IMPROPER
OR UNDUE DELAYS IN COURTY CONSIDERATION OF THE CASE. THE CASE
WAS ONLY SUBMITTED TO THE COURTS IN OCTOBER OR NOVEMBER AND
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AN INITIAL HEARING IS EXPECTED SOON. THIS IS CERTAINLY NO SLOWER

THAN IN US COURTS. IT IS TRUE THAT IF THE CASE WERE TAKEN THROUGH THE ENTIRE INDIAN APPEALY PROCEDURE IT COULD TAKE SEVERAL YEARS TO RESOLVE. (THIS, WE UNDERSTAND, WOULD BE LITTLE DIFFERENT IN THE US).

4. WE HESITATE TO ATTEMPT TO DEVELOP A FULLER RUNDOWN ON THE TWO FIC CASES. WE SIMPLY DO NOT HAVE THE MANPOWER OR EXPERTISE TO REVIEW THE VOLUMINOUS FILES ON BOTH CASES. ESSENTIALLY, BOTH CASES ARE SIMILAR AND INVOLVE THE SAME PARTIES. IN BOTH CASES EACH SIDE MADE CLAIMS AND COUNTERCLAIMS. IN THE FIRST CASE THE ARBITRATORS ROLES IN FAVOR OF THE AMERICAN COMPANY. THE AGREEMENT ON WHICH THE ARBITRATION WAS BASED PROVIDES BOTH THAT THE AWARD WILL BE FINAL AND THAT IT MAY BE APPEALED TO THE COURTS. THE ISSUE BEFORE THE COURTS IS WHETHER TO ACCEPT OR REJECT THE ARBITRAL AWARD - IT MAY NOT BE MODIFIED AND NO AWARD AGAINST THE US COMPANY MAY BE ISSUED. THE SECOND CASE INVOLVES A FCI CLAIM OF RS.40 MILLION AGAINST THE US COMPANY AND A COUNTERCLAIM OF RY. 80 MILLION AGAINST FI. AN INITIAL HEARING IS SCHEDULED IN MARCH 1975 BUT THE CASE IS COMPLICATED AND MAY TAKE SOME TIME TO RESOLVE.

5. WE RECOMMEND WE LIMIT OUR COMMENTS TO SENATOR TAFT AND THE FIRMS INVOLVED TO THE MATERIAL IN PARAS 2 AND 3 ABOVE. WE CONCUR THAT THE MATTER IS A COMMERCIAL DISPUTE WHICH THE FIRMS INVOLVED MAY SEEK TO RESOLVE AS THEY SEE FIT. WE WOULD BE HAPPY TO ASSIST THE US FIRM IN ANY APPROPRIATE WAY BUT SEE LITTLE WE CAN DO AT THIS POINT.
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